Supreme Court, U.S.
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NO. 94-1830

In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

CELESTE ROGERS, wife of/and
RONALD GLEN ROGERS,
Petitioner

VERSUS

CORROSION PRODUCTS, INC.,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

When an involuntary petition for bankruptcy is filed against an alleged tortfeasor resulting in the issuance of a stay, does the limitation period for commencing a tort suit under Louisiana law continue to run without interruption or suspension?

PARTIES

Petitioners, Ronald Glen Rogers and Celeste Rogers are citizens of the State of Texas.

Respondent, Corrosion Products, Inc. is a Louisiana Corporation.

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TO THE HONORABLE SUPREME COURT:

The Respondent, Corrosion Products, Inc., respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioners, Ronald Glen Rogers and Celeste Rogers.

OPINIONS BELOW

Plaintiffs filed suit against Corrosion Products, Inc. ("CPI") on March 23, 1993 seeking damages for personal injuries allegedly sustained on June 20, 1991. CPI answered plaintiffs' Complaint denying liability and asserting an affirmative defense that plaintiffs failed to timely file their suit within Louisiana's one year prescriptive period. CPI then filed a motion for summary judgment seeking dismissal of the plaintiffs' Complaint. After considering the briefs of the parties, the United States District Court for the Eastern District of Louisiana granted the motion and rendered judgment in favor of CPI. From that judgment, plaintiffs appealed to the United States Court of Appeals for the Fifth Circuit.

On January 12, 1995, the Fifth Circuit affirmed the trial court's holding that, under either the Louisiana doctrine of contra non valentem or pursuant to applicable bankruptcy law, the involuntary bankruptcy petition filed against CPI did not suspend the one year prescriptive period. Plaintiffs filed a Petition for Writ of Certiorari from that judgment, contesting only the holding that the bankruptcy statute, 11 U.S.C. Section 108(c), does not operate to suspend a state's statute of limitations while the bankruptcy stay is in effect.

STATUTE INVOLVED

The statute at issue is 11 U.S.C. Section 108(c).

STATEMENT OF THE CASE

While working at CPI's facility in Belle Chasse, Louisiana on June 20, 1991, Ronald Rogers allegedly sustained personal injuries. In the complaint filed March 23, 1993, by Ronald Rogers and his wife, Celeste Rogers, petitioners herein, they specifically alleged that a bankruptcy petition filed by CPI prevented them from timely filing suit against CPI. It is uncontested by petitioners that their suit against CPI was filed more than one year after the alleged incident occurred involving Ronald Rogers.

The fact that a bankruptcy petition was filed is undisputed; however, it was not filed by CPI. To the contrary, the bankruptcy proceeding was instigated by a Petition for Involuntary Relief filed by three creditors of CPI. That petition was filed on February 10, 1992, and voluntarily dismissed at the request of those creditors under an order of dismissal issued by the bankruptcy court on December 3, 1992. Under the order of dismissal, the stay resulting from the filing of the involuntary petition was set aside and vacated. Notice of that order and that the stay had been set aside and vacated was issued by the bankruptcy court on December 7, 1992.

Petitioners never presented any facts or evidence in the district court showing that they had filed a claim in the bankruptcy proceeding or attempted to seek any relief from the stay which allegedly prevented the filing of their suit. There was no evidence that petitioners attempted to file suit or otherwise assert their claim prior to March 23, 1993.

A summary of the relevant dates include:

Date of alleged injury	06/20/91
Bankruptcy Petition filed	02/10/92
Bankruptcy Petition dismissed Stay Vacated	12/03/92
Notice of Dismissal issued	12/07/93
Plaintiffs' suit filed	03/23/93

None of these dates are in dispute.

SUMMARY OF THE ARGUMENT

I. The clear and unambiguous language of Section 108(c) of the Bankruptcy Code does not operate to suspend a state statute of limitations. That statute suspends a limitation period only when state or federal law independently provides for a suspension. Louisiana law does not provide for the suspension of that period when a bankruptcy stay is issued. Therefore, after the stay is vacated, Section 108(c) does no more than grant a thirty day grace period during which any otherwise prescribed claim may be filed.

II. Neither the legislative history of Section 108(c), cases interpreting same, nor public policy reasons favor a suspension of the limitation period. Petitioners' untimely suit was properly dismissed.

REASONS FOR DENYING THE WRIT

I. Bankruptcy Law Does Not Suspend the Limitation Period for State Law Based Tort Claims.

Petitioners agree with the lower courts that Louisiana law does not suspend the limitation period when a bankruptcy stay is issued. Rather, their challenge is directed to whether bankruptcy law, specifically 11 U.S.C. Section 108(c), provides for the suspension of applicable non-bankruptcy statutes of limitation during the pendency of bankruptcy proceedings. According to petitioners, while CPI was under the control of the bankruptcy stay, the Bankruptcy Code operated to toll the Louisiana limitations period for tort actions. That limitation or prescriptive period is set forth in Louisiana Civil Code Article 3492, which provides in pertinent part: "[d]elictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained." Once the bankruptcy stay was lifted, under petitioners' interpretation of Section 108(c), they would have the unexpired period available to them to file their claim.

Review of this case is not necessary due to the fact that, as both lower courts held, the language in Section 108(c) does not suspend federal or state statutes of limitations during an automatic bankruptcy stay, rather it simply acknowledges external federal or state laws which independently suspend the time period. Moreover, neither legislative history nor public policy reasons demand that the statue of limitations be suspended.

A. The language of Section 108(c) is clear and unambiguous

Contrary to petitioners' assertion, the "Extension of Time" provision of the Bankruptcy Code does not provide for the tolling of all externally imposed statutes of limitations while a debtor is in bankruptcy. The pertinent statute states:

> [I]f applicable non-bankruptcy law ... fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor ... and such period has not expired before the date of the filing of the petition, then such a period does not expire until the later of -
>
> > (1) the end of such period, including any suspension of such period occurring on or after the

> commencement of the case; or
>
> (2) 30 days after notice of the termination or expiration of the stay under Section 362.

The interpretation advanced by petitioners is inconsistent with the clear meaning of the language of the statute.

As the Fifth Circuit and the trial court held, by its plain terms Section 108(c) does not operate to toll any externally imposed time bars. Section 108(c) suspends these periods only when applicable non-bankruptcy laws explicitly provide for such a suspension.[1] Section 108(c) refers to a general "any" suspension as opposed to a more specific "the" suspension. The suspension of time periods referred to in Section 108(c)(1) do not independently stop the running of the statute of limitations; this language simply incorporates suspensions of deadlines that are expressly provided in other federal or state statutes.

The second part of Section 108(c) provides for applicable time deadlines to be extended but only for thirty days after notice of the termination of a bankruptcy stay, if any such deadline would have fallen on an earlier date.

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1 Rogers v. Corrosion Products, Inc., 42 F.3d 292, 297 (5th Cir. 1995).

Absent a specific tolling provision in a state or federal law, the party (claimant) is granted no more than the thirty day extension set forth in Section 108(c)(2).[2] Thus, the statute is clear - if other state or federal law so provides, suspension occurs. Absent such provisions, claimants are entitled to no more than a thirty day grace period.

B. The legislative history does not reflect any intent for tolling.

If there is any ambiguity in the use of the term "any suspension" in Section 108(c)(1), which is not the case here, that ambiguity is clarified by examining the legislative history of the provision. The legislative history demonstrates that Section 108(c)(1) refers only to "special suspensions" that are found in non-bankruptcy provisions. Illustrative examples of such special suspensions are found in the Internal Revenue Code.[3]

The legislative history of Section 108(c) recognizes that the statute of limitations may be suspended by a special federal or state law. But Section 108(c)(2) does not suspend, it merely gives claimants an extra thirty days in order to file suit following the lifting

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2 2 Lawrence P. King, Collier on Bankruptcy, §108.4 (5th ed. 1993).

3 See 26 U.S.C. §6503(h)(2)(Supp. 1995); In re West, 5 F.3d 423, 426-27 (9th Cir. 1993).

of the automatic stay.[4] Nowhere in the statute or in the legislative history is there any indication that Section 108(c) independently tolls a state statute of limitation.

Interestingly, a previous version of Section 108(c) did expressly provide for the suspension of statutes of limitations; however, Congress eliminated this provision when it amended the statute. In light of the historical path of this statute, the obviously deliberate language is instructive of congressional intent to remove the suspensive effect of the statute. What remains is a clear expression of congressional intent that the Bankruptcy Code is designed to recognize, respect, and not interfere with a state's right to provide for such a suspension.

If the statute is not clear enough the legislative intent is certainly unambiguous: It is up to the states or Congress to enact specific legislation for a limitation period to be tolled. If that does not occur, Congress, having previously provided for such suspensions, has now chosen only to grant a thirty day grace period.

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4 124 Cong. Rec H.11, 109 (daily ed. September 28, 1978). H.R. Rep. No. 595, 95th Cong., 1st Sess. 318, reprinted in 1978 U.S.C.C.A.N. 5787, 5816.

C. Public policy militates against tolling

At certain times, the rationale behind the statutes of limitations may have to yield to policies concerning the plaintiff's rights. An appropriate remedy is tolling or suspension when particular external forces beyond a plaintiff's power to control disable that plaintiff from suing. Louisiana law provides for this limited suspension in the doctrine of contra non valentem agere non praescripto which the lower courts found inapplicable to the dispute. Since that is the only pertinent state law upon which petitioners could rely, it is reasonable to assume that the State of Louisiana has not expressed any public policy supportive of petitioners' argument.

In the bankruptcy arena, the perceived public policy rationale for tolling is likewise lacking because the plaintiffs have advance knowledge of when claims are to expire and may act to protect themselves. This describes the situation at hand. The Rogers cannot claim that they were prevented from exercising their rights; they were certainly able to petition the bankruptcy court to lift the automatic stay, **which they did not**. They took no action until well after both the one year statute of limitations and the thirty (30) day extension had expired. Neither state nor federal public policy considerations are at issue.

II. There is No Conflict Warranting Review

In an attempt to engender this case for review by this Court, petitioners lead this Court astray by focusing on cases which are not factually similar and consequently not pertinent to this decision. There is no conflict among the circuit courts as petitioners assert. Moreover, there are no factually similar federal cases upon which petitioners rely. Thus, there is no need for review by this court.

A. There are No Federal Circuit Court Cases Which Support Petitioners' Position

The argument of petitioners is supported not with cases from the circuit courts, but with two state court cases and one bankruptcy court case. These cases involve the enforcement of mechanic's liens and the courts held only that the periods for enforcement of liens are suspended during the automatic stay.

A suit for the enforcement of a lien and a personal injury lawsuit are distinct claims. A lien is a qualified property right which binds the property to a debt or claim for its satisfaction.[5] Thus, mechanic's liens are "valid and enforceable against the debtor at the

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5 Black's Law Dictionary 832 (5th ed. 1979).

time the bankruptcy petition was filed."[6] In comparison, a personal injury suit, which is merely a claim that a debt is owed, must be reduced to judgment before it is enforceable.

In re Cutty's-Gurnee, the only federal case cited by petitioners in support of their position, is distinguishable from the case at hand because the parties stipulated that the statute of limitations at issue was tolled for the period when the automatic stay was in force. Additionally, it is not entirely clear from the court's opinion whether the "tolling" entitled the party to the thirty day grace period or the duration of the stay once the stay was lifted.

B. A Conflict Among the Circuit Courts is Lacking.

There is neither conflict within the Second Circuit nor among the circuit courts as petitioners assert. In its opinion, the Fifth Circuit referenced a "potential split" due to opinions by different panels of the Second and Ninth Circuits.[7] Recent case law, however, demonstrates a fusion of the law on this subject as exemplified by the recent

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6 In re Cutty's-Gurnee, 133 B.R. 929, 931 (Bankr. N.D. Ill. 1991).

7 Rogers v. Corrosion Products, Inc., 42 F.3d 292, 296 (5th Cir. 1995)(emphasis added).

opinions pertaining to personal injury actions from the Second Circuit, the Fifth Circuit, and lower federal courts.[8]

In this matter, the trial and appellate courts relied upon the Second Circuit case of Aslanidis which, like the case at hand, involved a personal injury action and a statute of limitations which had expired while a bankruptcy stay was in effect.[9] Due to the fact that the statute of limitations at issue did not provide for a suspension while an automatic stay was in effect, and the thirty day extension period in Section 108(c)(2) had expired, the claimant was barred from asserting his claim.

The Second Circuit specifically held that Section 108(c) did not provide for the tolling of all externally imposed time bars. Instead, Section 108(c) called for applicable deadlines to be extended only for thirty days after notice of the termination of a bankruptcy stay, if any deadline would have fallen on an earlier date. As the court stated in Aslanidis:

> ...the reference in Section 108(c)(1) to "suspension" of

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8 See id. at 292; Aslanidis v. U.S. Lines, Inc., 7 F.3d 1067 (2nd Cir. 1993); and Mamer v. Apex. R.E. & T., 852 F. Supp. 870 (E.D. Mo. 1994).

9 Aslanidis, 7 F.3d at 1069-71.

> time limits clearly does not operate in itself to stop the running of a statute of limitation; rather, this language merely incorporates suspensions of deadlines that are expressly provided for in other federal or state statutes.[10]

The Petition for Writ references three cases which have "implied/left open this interpretation" of Section 108(c). In these cases, the circuit courts do not specifically provide for the tolling of non-bankruptcy statutes of limitations. The holdings in those cases involve mechanic's liens and were nothing more than dicta with regard to personal injury rights of action.

There are numerous federal cases which hold that Section 108(c)(1) does not toll a statute of limitations. Petitioners reference only one Second Circuit case which they maintain supports their position but this case is factually distinguishable. Several lower court cases provide reasoning analogous to the Fifth Circuit in Rogers and the Second Circuit in Aslanidis.[11] More importantly,

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10 Id. at 1073.

11 See, e.g., Mamer v. Apex R.E. & T., 852 F.Supp. 870, 872-73 (E.D. Mo. 1994); In re Pettibone Corp., 110 B.R. 848, 852-53 (N.D. Ill. 1990); Grotting v. Hudson Shipbuilders,

any conflict which existed has now been resolved by the Second Circuit, the court which created the brief, illusory conflict.

CONCLUSION

Review by this Court is unnecessary. The statutory language does not provide for the tolling of state statutes of limitations. Federal bankruptcy law expressly defers to state law and Louisiana law does not independently provide for the suspension of the prescriptive period. There is neither a strong public policy rationale nor a conflict among the circuits demanding review of this case.

The Petition for Writ of Certiorari should be denied.

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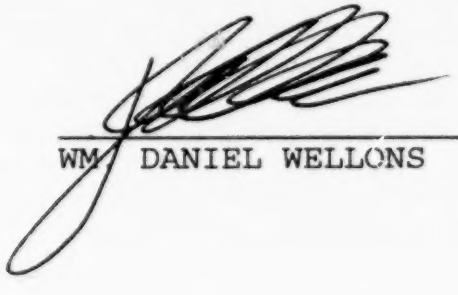
Inc. 85 B.R. 568, 559 (Bankr. W.D. Wash. 1988); In re Baird, 63 B.R. 60, 62-63 (Bankr. W.D. Ky. 1986).

CERTIFICATE

I hereby certify that a copy of the above and foregoing pleading has been served on Counsel for Petitioners, Perrin C. Butler, Butler & Stern, 119 Metairie Lawn Drive, Metairie, LA 70001 by depositing same in the United States Mail, postage prepaid and properly addressed to them at their respective offices, this 31st day of May, 1995.



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